

ANDRÉ BIROTTE JR. (CSBN 155627)  
United States Attorney, Central District of California

JUSTIN R. RHOADES (CSBN 230463)  
XOCHITL ARTEAGA (CSBN 227034)  
Assistant United States Attorneys  
Special Assistants to the U.S. Attorney General

1500 U.S. Courthouse  
312 North Spring Street  
Los Angeles, California 90012  
Telephone: (213) 894-3380/0500  
FAX: (213) 894-3713  
Email: justin.rhoades@usdoj.gov  
xochitl.arteaga@usdoj.gov

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,	)	No. CR 10-703-MMC
	)	
Plaintiff,	)	
	)	<b>PROPOSED ORDER</b>
v.	)	
	)	
MICHAEL HIGGINBOTHAM,	)	
	)	
Defendant.	)	

Upon a showing of good cause, the Court finds that by his Motion to Vacate, Set Aside or Correct His Sentence, filed on December 7, 2011, defendant Michael Higginbotham (“defendant”) raises claims of ineffective assistance of counsel and that the government cannot fully respond to these claims without the requested waiver of the attorney-client privilege and requested discovery. The Court therefore ORDERS that a response from the government to the motion is stayed until further order of the Court.

The Court finds that if defendant chooses to proceed with the claims raised in his motion, he has waived the attorney-client privilege in limited part, specifically as to the matters raised in that motion. Therefore, the Court ORDERS that defendant respond within 30 days whether he will withdraw the claims raised in his motion.

1 The Court further finds that upon a response from defendant, if defendant chooses to proceed  
2 with his motion, it will enter a further order that (1) defendant has waived the attorney-client  
3 privilege in limited part, specifically as to the areas raised in the Motion to Vacate, Set Aside or  
4 Correct His Sentence, filed December 7, 2011; (2) that the government is entitled to inquire of First  
5 Assistant Federal Public Defender Geoffrey Hansen regarding any oral communications with  
6 defendant and review any written communications with the defendant relating to the subject areas  
7 raised in defendant's claims; (3) that the government is precluded from using the privileged materials  
8 for any purpose other than litigating the Motion to Vacate, Set Aside or Correct His Sentence; and  
9 (4) that the government may not disclose these materials to any other persons, including law  
10 enforcement or prosecutorial agencies, excluding other representatives of the United States  
11 Attorney's Office who are assisting in responding to this motion.

12 SO ORDERED:

13 Dated: January 4, <sup>2012</sup>~~2011~~

  
HONORABLE MAXINE M. CHENEY  
United States District Judge